

Message Text

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PAGE 01 BONN 07319 01 OF 04 031039Z

17

ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 AID-05 CIAE-00 COME-00 EB-07

FRB-03 INR-07 NSAE-00 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-04

CEA-01 L-03 H-02 PA-01 PRS-01 FTC-01 JUSE-00 ACDA-07

OIC-02 DODE-00 NSCE-00 SSO-00 USIE-00 INRE-00 SAJ-01

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O R 031026Z MAY 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 8527

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 01 OF 04 BONN 07319

E.O. 11652: GDS

TAGS: PFOR UN WB FR US UK UR

SUBJECT: APRIL 8 SOVIET PROTEST ON FRG REPRESENTATIVE

TO UN COMMISSION ON TRANSNATIONAL CORPORATIONS

REF: BONN 6334

BEGIN SUMMARY. THE BONN GROUP IS DIVIDED ON WHETHER THE ALLIES SHOULD RESPOND TO THE APRIL 8 SOVIET PROTEST WITH A MINIMALIST REPLY (WHICH THE FRENCH FAVOR AND LONDON HAS AGREED TO) OR WITH A DETAILED REFUTATION OF ALL SOVIET ARGUMENTS (WHICH THE FRG REP HAS BEEN INSTRUCTED TO PRESS FOR). THE BONN GROUP HAS AGREED TO REFER BOTH
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PAGE 02 BONN 07319 01 OF 04 031039Z

SHORT FORM AND LONG FORM DRAFT REPLIES TO CAPITALS FOR

CONSIDERATION. THE EMBASSY BELIEVES IT WOULD BE PREFER-
ABLE TO CONTENT OURSELVES WITH A MINIMALIST REPLY BUT
RECOGNIZES THAT THIS MAY NOT SATISFY THE FRG AND THAT THE
GERMANS MIGHT RAISE THE MATTER IN OSLO. REQUEST
INSTRUCTIONS. END SUMMARY.

1. HAVING INITIALLY VOLUNTEERED TO DRAFT A FULL REPLY
TO THE APRIL 8 SOVIET PROTEST (REFTEL), SO THAT THE
BONN GROUP COULD CONSIDER THE FULL IMPLICATIONS OF SUCH
A REPLY, THE UK REP HAS NOW CONFESSED INABILITY TO COME
UP WITH SUCH A DRAFT. THE BRITISH HAVE BECOME CONVINCED,
ACCORDING TO UK REP (HITCH) THAT SUCH A REPLY WOULD BOTH
BE TOO LONG AND RUN COUNTER TO THE DESIRE TO REFRAIN
FROM REPEATING LEGAL ARGUMENTS WHICH THE ALLIES HAD
ALREADY CLEARLY PUT ON THE RECORD.

2. THE FRENCH REP (BOISSIEU) HAS URGED FROM THE OUTSET
THAT THE ALLIES GIVE A MINIMALIST REPLY IN THE UN WHICH
WOULD MERELY CITE REFERENCES TO PREVIOUS ALLIED NOTES
SETTING OUT OUR POSITION ON THE ISSUES RAISED IN THE
LAST SOVIET PROTEST -- SPECIFICALLY, THE JUNE 27, 1975,
REPLY TO THE FIRST SOVIET PROTEST ON THE FRG REP TO
THE UN COMMISSION ON TRANSNATIONAL CORPORATIONS AND THE
APRIL 14, 1975, ALLIED NOTE IN THE DEMOGRAPHIC YEARBOOK
SERIES. WORKING FROM A FRENCH DRAFT, THE BONN GROUP
ON APRIL 20 PREPARED THE FOLLOWING "AD CONSIDERANDUM"
TEXT FOR FURTHER STUDY:

BEGIN TEXT

WE HAVE THE HONOR TO REFER TO THE LETTER DATED 8 APRIL
1976 FROM THE PERMANENT REPRESENTATIVE OF THE USSR
(A/3180) CONCERNING THE DESIGNATION OF DR. GUENTHER AS
REPRESENTATIVE OF THE FRG TO THE SECOND SESSION OF THE
UN COMMISSION ON TRANSNATIONAL CORPORATIONS.

THE GOVERNMENTS OF FRANCE, THE UK AND THE USA DO NOT
ACCEPT THE ALLEGATIONS CONTAINED IN THE RUSSIAN NOTE
REFERRED TO ABOVE. THEY REAFFIRM THE TERMS OF THEIR
LETTER OF 14 APRIL 1975 (A/10078 AND CORRECTION 1) ABOUT
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PAGE 03 BONN 07319 01 OF 04 031039Z

THE LEGAL STATUS OF BERLIN AND ABOUT THE ORIGIN AND
NATURE OF THE RIGHTS OF THE FOUR POWERS, AND OF THEIR
LETTER OF 26 JUNE 1975 (A/10127) ABOUT THE LEGALITY OF
THE LOCATION IN BERLIN OF THE FEDERAL OFFICE FOR THE
SUPERVISION OF CARTELS AND TRUSTS AND OF THE
DESIGNATION OF DR. GUENTHER AS CHAIRMAN OF THE FRG
DELEGATION TO THE UN COMMISSION ON TRANSNATIONAL
CORPORATIONS.

WE ASK YOU TO CIRCULATE THIS LETTER AS
END TEXT

3. AT THE CONCLUSION OF THE APRIL 27 BONN GROUP
MEETING, THE FRG DISTRIBUTED A REVISED, FULLER DRAFT
FOR DISCUSSION AT THE NEXT MEETING. THE TEXT OF THE
FRG DRAFT FOLLOWS:

BEGIN TEXT

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PAGE 01 BONN 07319 02 OF 04 031042Z

17
ACTION IO-13

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OIC-02 DODE-00 NSCE-00 SSO-00 USIE-00 INRE-00 SAJ-01

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O R 031026Z MAY 76
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 8528
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO BRUSSELS
USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 02 OF 04 BONN 07319

WE HAVE THE HONOR TO REFER TO THE LETTER ... CONCERNING THE REPRESENTATION OF THE FRG TO THE SECOND SESSION OF THE UNITED NATIONS COMMISSION ON TRANSNATIONAL CORPORATIONS.

IN THIS CONNECTION THE GOVERNMENTS OF FRANCE, THE UK AND THE USA REAFFIRM THE CONTENTS OF THE LETTER ON THIS SUBJECT THAT WAS SENT TO YOU BY THEIR PERMANENT REPRESENTATIVES TO THE UNITED NATIONS ON 26 JUNE 1975 (A/10127).

INSOFAR AS NEW POINTS ARE RAISED BY THE COMMUNICATION
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PAGE 02 BONN 07319 02 OF 04 031042Z

OF THE PERMANENT REPRESENTATIVE OF THE USSR TO THE UNITED NATIONS REFERRED TO ABOVE, THEY WISH TO RECALL THAT THE QUADRIPARTITE STATUS OF GREATER BERLIN STEMS FROM THE ORIGINAL RIGHTS AND RESPONSIBILITIES OF THE FOUR POWERS. IT WAS IN THE EXERCISE OF THE SUPREME AUTHORITY OF THE THREE POWERS WITH RESPECT TO THE WESTERN SECTORS OF BERLIN WHICH THESE ORIGINAL RIGHTS AND RESPONSIBILITIES BESTOW UPON THEM, THAT THE LOCATION OF THE FEDERAL OFFICE FOR THE SUPERVISION OF CARTELS AND TRUSTS IN THE WESTERN SECTORS OF BERLIN IN 1957 WAS APPROVED. THERE IS THEREFORE NO BASIS FOR THE CONTENTION THAT THE ESTABLISHMENT OF THIS OFFICE WAS IN ANY WAY AN ILLEGAL ACT OF THE FEDERAL REPUBLIC OF GERMANY.

AS FAR AS THE PERMANENT REPRESENTATION OF THE USSR TO THE UNITED NATIONS CHARACTERIZED THE WESTERN SECTORS OF BERLIN AS A "SEPARATE ENTITY," IT IS WELL KNOWN THAT THE STATUS OF GREATER BERLIN, WHICH CONSISTS OF THE SECTORS OF THE UNITED KINGDOM, THE UNITED STATES OF AMERICA, THE UNION OF SOVIET SOCIALIST REPUBLICS, AND OF FRANCE, IS DETERMINED BY THE RELEVANT AGREEMENTS AND DECISIONS OF THE FOUR POWERS, MADE IN THE EXERCISE OF THEIR QUADRIPARTITE RIGHTS AND RESPONSIBILITIES. THESE QUADRIPARTITE AGREEMENTS AND DECISIONS, INCLUDING THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971, PROVIDE NO WARRANT FOR ANY ASSERTION THAT THESE QUADRIPARTITE RIGHTS AND RESPONSIBILITIES RELATE ONLY TO THE WESTERN SECTORS OF BERLIN.

THE FACT THAT, WITHIN THE LIMITS OF THE QA OF 3 SEPTEMBER 1971, THE FEDERAL REPUBLIC OF GERMANY IS ENTITLED TO REPRESENT THE INTERESTS OF THE WESTERN SECTORS OF BERLIN ABROAD AND THAT THE TIES BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL REPUBLIC OF GERMANY WILL BE MAINTAINED AND DEVELOPED, TAKING INTO

ACCOUNT THAT THESE SECTORS CONTINUE NOT TO BE A
CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND
NOT TO BE GOVERNED BY IT, SHOWS THAT THE
CHARACTERIZATION OF THE PERMANENT REPRESENTATION OF
THE USSR REFERRED TO ABOVE IS MISLEADING AND THEREFORE
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PAGE 03 BONN 07319 02 OF 04 031042Z

INAPPROPRIATE TO DESCRIBE THE SPECIAL RELATIONSHIP
BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL
REPUBLIC OF GERMANY.

(CLOSING PARAGRAPH)

END TEXT.

4. THE FRG REP (HENZE) STATED AT THE APRIL 29 BONN
GROUP MEETING THAT THE SHORT FORM REPLY WAS UNACCEPTABLE
AND THAT HE HAD BEEN INSTRUCTED TO CALL FOR A REPLY
WHICH WOULD REJECT THE SOVIET CONTENTIONS IN A WAY
WHICH WOULD MAKE IT CLEAR TO EVERYONE IN THE UNITED
NATIONS THE WESTERN POSITION AND ALLIED VIEWS ON
BERLIN. THE UK REP (HITCH) STATED THAT HE COULD SEE
THE MERITS OF THE FRG DRAFT, BUT THE DEMERITS WERE
THAT IT PROVIDED THE SOVIETS AN OPPORTUNITY TO REOPEN
THE QUESTION. MEANWHILE, HITCH SAID, LONDON HAD
ALREADY GIVEN ITS APPROVAL TO THE SHORT FORM TEXT IN
PARA TWO ABOVE. FRENCH REP (BOISSIEU) CONTINUED
TO ARGUE FOR THE SHORT FORM.

5. THE US REP STATED THAT HE PERSONALLY LIKED THE
FRG DRAFT BUT WOULD BE RELUCTANT TO RECOMMEND IT
TO WASHINGTON BECAUSE OF THE INEVITABLE ESCALATION OF
THE ARGUMENT WITH THE SOVIETS. HE THOUGHT THE BONN
GROUP SHOULD FIRST DECIDE WHAT AUDIENCE THE REPLY WAS
INTENDED FOR (THE SOVIETS, THE MEMBERS OF THE UN AT
LARGE, OR THE WEST GERMAN ELECTORATE). HE SUGGESTED
THAT THE REAL AUDIENCE SHOULD BE THE SOVIETS, AND THAT

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PAGE 01 BONN 07319 03 OF 04 031049Z

17

ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 AID-05 CIAE-00 COME-00 EB-07

FRB-03 INR-07 NSAE-00 TRSE-00 XMB-02 OPIC-03 SP-02

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O R 031026Z MAY 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 8529

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

AMEMBASSY LONDON

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AMEMBASSY PARIS

USMISSION NATO BRUSSELS

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C O N F I D E N T I A L SECTION 03 OF 04 BONN 07319

EDUCATION OF UN MEMBERS SHOULD BE LEFT FOR THE MORE EXTENSIVE PROJECT THE US WAS PROPOSING FOR CONSIDERATION AT THE OSLO QUADRIPARTITE MEETING. IF THAT COULD BE AGREED, THE US REP CONTINUED, IT SHOULD THEN BE THE TASK OF THE BONN GROUP TO EXAMINE EACH SOVIET CONTENTION CAREFULLY AND MAKE CERTAIN THAT NONE OF THEM WENT UNANSWERED, EITHER DIRECTLY OR BY REFERENCE TO EARLIER ALLIED NOTES, IN WHATEVER REPLY WAS EVENTUALLY AGREED UPON.

6. LACKING AGREEMENT IN THE ENSUING DISCUSSIONS, THE BONN GROUP ACCEPTED THE FRG REQUEST THAT THE FRG DRAFT BE SUBMITTED TO CAPITALS ALONG WITH THE SHORT CONFIDENTIAL

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PAGE 02 BONN 07319 03 OF 04 031049Z

FORM DRAFT FOR FULLER CONSIDERATION.

7. COMMENT. EMBASSY ANALYSIS OF THE SOVIET NOTE LEADS US TO RECOMMEND THAT THE DEPARTMENT OPT FOR THE SHORT FORM REPLY IN PARA TWO ABOVE. WE RECOGNIZE

THAT THERE ARE TWO PROBLEMS:

A. IT WILL BE DIFFICULT TO PERSUADE THE FRG TO AGREE (AND IT IS EVEN POSSIBLE THAT THE ISSUE COULD CARRY OVER FOR DISCUSSION IN OSLO, AS PART OF THE GENERAL DISCUSSION ON HOW TO COUNTER SOVIET ATTACKS ON THE FRG RIGHT OF REPRESENTATION OF THE INTERESTS OF THE WSB); AND

B. THE PREVIOUS REPLIES WHICH WOULD BE CITED DO NOT SPECIFICALLY REFUTE ALL ALLEGATIONS IN THE APRIL 8 SOVIET NOTE.

8. WITH REGARD TO THE LATTER DIFFICULTY, OUR VIEW IS THAT THE TWO EARLIER NOTES WHICH WOULD BE CITED, TAKEN TOGETHER, COME CLOSE ENOUGH TO ANSWERING THE MOST RECENT SOVIET OBJECTIONS TO AVOID ANY CONCESSION OF LEGAL POSITIONS. AS AN AID TO THE DEPARTMENT'S ANALYSIS OF THE NOTE AND THE PROPOSED REPLY, WE SUGGEST THAT THE FOLLOWING ARE THE MAJOR ELEMENTS TO BE CONSIDERED:

A. THE JUNE 27, 1975 ALLIED REPLY TO THE TNC PROTEST, WHICH WAS REAFFIRMED IN THE MARCH 23, 1976 ALLIED NOTE, MADE THE POINT THAT THE LOCATION OF THE FEDERAL CARTEL OFFICE IN BERLIN DID NOT CONTRAVENE THE QA. IN RETURNING TO THE FRAY THE SOVIETS HAVE AVOIDED ALL MENTION OF THE QA, IN EFFECT ASSERTING THAT IT WAS NEVER LEGAL TO ESTABLISH THE FEDERAL CARTEL OFFICE IN BERLIN. THIS IS A RATHER ARTFUL ATTEMPT TO COUNTER THE EARLIER IMPLIED ARGUMENT THAT THE FEDERAL CARTEL OFFICE WAS RATIFIED BY THE QA AS PART OF THE "EXISTING SITUATION." NEVERTHELESS, IT WOULD NOT SEEM ESSENTIAL TO REITERATE OUR VIEWS ON THAT POINT, UNLESS WE WANT TO SPELL OUT SPECIFICALLY OUR INTERPRETATION OF "EXISTING SITUATION."

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PAGE 03 BONN 07319 03 OF 04 031049Z

B. THE SOVIET NOTE ATTRIBUTES QUADRIPARTITE RIGHTS AND RESPONSIBILITIES TO WARTIME AND POST-WAR "AGREEMENTS AND DECISIONS" -- NOT TO ORIGINAL OCCUPATION RIGHTS. THIS ARGUMENT HAS BEEN REFUTED THROUGH THE YEARS, MOST RECENTLY IN THE DEMOGRAPHIC YEARBOOK SERIES, AND WE DOUBT THAT WE WOULD LOSE ANYTHING BY IGNORING IT ON THIS PARTICULAR OCCASION.

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PAGE 01 BONN 07319 04 OF 04 031047Z

17

ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 AID-05 CIAE-00 COME-00 EB-07

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O R 031026Z MAY 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 8530

INFO USMISSION USBERLIN

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C O N F I D E N T I A L SECTION 04 OF 04 BONN 07319

C. STATING THAT ALLIED RIGHTS AND RESPONSIBILITIES
DID NOT GIVE THE THREE POWERS THE RIGHT TO SANCTION
"ILLEGAL" FRG ACTIONS SUGGESTS THAT THERE ARE
LIMITATIONS ON ALLIED SUPREME AUTHORITY IN THE
WESTERN SECTORS OF BERLIN. WE DO NOT RECALL HAVING
ENCOUNTERED THIS PARTICULAR ARGUMENT BEFORE, BUT WE
ARE NOT CERTAIN THAT MUCH MORE COULD BE SAID ON THE
SUBJECT -- WITHOUT GOING INTO A LENGTHY LEGAL
DISSERTATION -- THAN TO REPEAT THE STATEMENT FROM THE
JUNE 27, 1975 NOTE THAT THE ALLIES APPROVED THE
LOCATION OF THE FEDERAL CARTEL OFFICE "ON THE BASIS
OF THEIR SUPREME AUTHORITY."
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PAGE 02 BONN 07319 04 OF 04 031047Z

D. THE SOVIET REFERENCE TO THE WESTERN SECTORS OF BERLIN (RATHER THAN BERLIN AS A WHOLE) AS A "SEPARATE ENTITY" GETS INTO QUESTIONS OF STATUS OF THE CITY ON WHICH ALLIED VIEWS WERE DETAILED IN THE APRIL 14, 1975 DEMOGRAPHIC YEARBOOK NOTE.

9. ON THE BASIS OF THIS ANALYSIS, WE RECOMMEND THAT THE US REP BE INSTRUCTED TO URGE THAT THE BONN GROUP AGREE TO A BRIEF REPLY ALONG THE LINES SET OUT IN PARA TWO ABOVE. AS IT WOULD BE DESIRABLE TO DISPOSE OF THE ISSUE BEFORE THE OSLO MEETING, GUIDANCE BY THE NEXT BONN GROUP MEETING (MAY 4) WOULD BE HELPFUL, IF AT ALL POSSIBLE.

10. ACTION REQUESTED: REQUEST INSTRUCTIONS.
HILLENBRAND

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Message Attributes

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04 MAY 2006

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Type: TE
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